

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1394 OF 2021

Sneh Sharma Joshi	Applicant
versus	
The State of Maharashtra	Respondent

WITH
INTERIM APPLICATION NO.1573 OF 2021

Ashok Kumar Ghanshyamdas Joshi	Intervenor
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In the matter between :

Sneh Sharma Joshi	Applicant
versus	
The State of Maharashtra	Respondent

Mr.Ashutosh Shukla for applicant in ABA.
Mr.Bhaves Thakur for Intervenor.
Mr.A.R.Kapadnis, APP, for State.
Mr.Shrikant Dhumal, PSI, Juhu Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 18th June 2021

PC :

1. The applicant is apprehending arrest in MECR No.8 of 2019 registered with Juhu Police Station for the offences under Section 406 r/w 34 of Indian Penal Code.
2. Private complaint was filed by father-in-law of the applicant before the Court of Metropolitan Magistrate, at Andheri, Mumbai against applicant, brother of applicant and sister-in-law of the

applicant. Learned Magistrate directed investigation vide Section 156(3) of Cr.PC and pursuant to that MECR was registered.

3. The allegations in the private complaint in nutshell were that the applicant is daughter-in-law of the complainant and accused nos.2 and 3 are the brother and sister-in-law of the applicant. The applicant got married to the son of complainant on 22nd January 2017. The applicant left for parents house at Guwahati on 12th December 2017 after informing her mother-in-law that she would return to Mumbai on or before 24th December 2017. The accused nos.2 and 3 had visited house of the complainant on various occasions between 8th December 2017 and 12th December 2017. The accused nos.2 and 3 helped the applicant to execute misappropriation of valuable jewellery. The applicant had taken her jewellery from complainant's wife on various occasions on the pretext of wearing the same. After using the jewellery the same was kept by the applicant in her locker of almirah in her bed room and the keys were lying with her. The applicant did not return the jewellery to her mother-in-law. The applicant lodged FIR with Guwahati Police Station. The complainant had made complaint to Juhu Police Station by letter dated 12th March 2018 and 15th March 2018 intimating that before leaving house, the applicant had locked the locker/almirah in her bed room and taken away the keys with her. The applicant filed complaint u/s.406 IPC. Search was conducted on the basis of order passed by the Magistrate Court at Guwahati at the residence of complainant on 27th November 2018. When the Police demanded the keys of lockers/almirah, the applicant refused to accept that keys were lying with her. The drawers/almirah were broken. The jewellery given to applicant were

not there. The complainant lodged the complaint on 27th November 2018. The search was videographed and photographed. The applicant with the help of accused nos.2 and 3 took away the jewellery given to her. The applicant had no right over the ornaments and hence accused have committed offence u/s.406 IPC. The FIR was registered on 6th November 2019. In the FIR it was alleged that the ornaments of marriage were kept by complainant's wife in the bank locker of Allahabad Bank. The applicant had opened new locker in Vijaya Bank and the ornaments of wife of complainant which were kept in Allahabad Bank locker, were kept in bank locker of applicant at Vijaya Bank. The ornaments were given to applicant by complainant's wife. The value of ornaments was Rs.19.10 lakh. The wife of complainant used to take ornaments from applicant whenever required and return to her after use. The applicant used to keep ornaments in locker of almirah in her bedroom. During search dated 27th November 2018 the ornaments of complainant's wife were not found in almirah. Applicant had not brought key.

4. The applicant and other accused preferred application for anticipatory bail before the Sessions Court, which has been rejected by order dated 19th May 2021. The application of accused nos.2 and 3 was allowed.

5. The contention of the applicant is that her marriage was performed with the son of complainant. She was subjected to harassment and torture. She left the matrimonial house on 12th December 2017. On 12th December 2017 she filed N.C complaint. The applicant filed a complaint for offences under Sections 498A,

307, 506 IPC with Police Station, at Guwahati on 22nd January 2018. The complainant and other accused had preferred application for anticipatory bail before High Court, at Guwahati. The said application was rejected on 19th April 2018. The accused in the said complaint thereafter approached the Apex Court and the proceedings are pending. The accused therein preferred petition for quashing FIR. The applicant has also initiated the proceedings under Domestic Violence Act and the complaint for offence u/s.406 IPC. Search warrant was issued by Court. The complainant had filed private complaint alleging offence of extortion before the Court of Magistrate against applicant and others. Learned Metropolitan Magistrate by order dated 2nd March 2019 directed inquiry u/s.202 of Cr.PC.

6. The contention of applicant is that the complaint is false. The whole intention of the complainant is to cause harassment to the applicant. The complaint is initiated as a counter blast to the complaint filed by the applicant. The applicant was continuously subjected to harassment by the complainant and others. The allegation of misappropriation of ornaments of the wife of complainant is after thought, baseless and frivolous. The applicant, her brother and sister-in-law were falsely implicated in the private complaint. Police refused to take cognizance of the complaint. Hence, private complaint was filed. There is history of litigation between both the sides. The applicant had left the matrimonial home on 12th December 2017. The almirah was always in possession of the family of complainant. The panchanama of search indicate that keys were found in side the locker of almirah. There was no complaint of misappropriation of the ornaments of complainant's

wife in the past till the applicant left the matrimonial home on 12th December 2017. Since the applicant has initiated complaint u/s.406 IPC and while search was being conducted to create offence, false complaint has been filed against applicant. In the previous complaint it is nowhere alleged that ornaments belonging to the complainant's wife were in custody of the applicant. The fact that stri-dhan of the applicant was to be recovered and it is not recovered from the complainant and his family members. The complainant had lodged the complaint alleging offence of extortion. There is no whisper about the entrustment or misappropriation of the ornaments by the applicant in the said complaint. The contents of private complaint and the FIR registered thereafter are contradictory to each other.

7. Learned APP submitted that investigation is in progress. Search was being conducted at the residence of complainant. Search warrant was issued by the concerned Court from Guwahati. The applicant was present during the search. She did not hand over keys of almirah. There is reason to believe that the applicant is in possession of ornaments. The value of misappropriated ornaments is Rs.19,10,000/-. Custodial interrogation of the applicant is necessary. Learned APP tendered copy of search panchanama dated 28th November 2018.

8. Learned advocate for complainant opposed the grant of relief. He submitted that list of ornaments misappropriated by the applicant has been provided in the FIR. It is only when the locker of almirah was opened, there was reason to believe that the applicant who was entrusted with the ornaments by her mother-in-law is

misappropriated the same since ornaments were missing from the locker. The almirah was in custody of the applicant. The key was with her. She has deliberately not produced the key which show that the applicant and the co-accused had removed the ornaments and misappropriated them. At all the relevant time keys of the locker situated in the bed room of the accused was in her possession and hence the applicant cannot contend that the complainant has taken away the jewellery. During search of residential premises of the complainant the applicant was asked to hand over keys of locker but she denied that she is carrying the keys and with the help of key maker the locker was opened in the presence of police. The proceedings were videographed wherein it was found that family jewellery was missing. The applicant has also taken away jewellery kept with her in Vijaya Bank which was operated by her. There is no delay in registering the FIR. It is only when the complainant learnt that jewellery was missing from almirah, it was realized that same was misappropriated by the accused. The applicant has played vital role. The jewellery is required to be recovered. The complainant made complaint to Juhu Police Station on 12th March 2018 and 15th March 2018. Complaints were also made on 9th January 2018 and 6th March 2018. Hence, the application be rejected.

9. I have perused the documents on record. There is matrimonial discord between the applicant and family of applicant's husband. The marriage was performed on 22nd February 2017 and apparently the applicant has left the matrimonial home on 12th December 2017. It can be seen that the applicant has initiated several proceedings against her husband and other family members. Prima facie, the allegations about misappropriation of ornaments belonging to the

family of the complainant, appears to be after thought. It is alleged that mother-in-law of the applicant had handed over her ornaments to the applicant which were misappropriated by her. The complainant has written letters to the Juhu Police Station that the applicant has taken away jewellery. Apparently the letters were written stating that jewellery belonging to the applicant was taken away by the applicant. In the previous proceedings or the complaint initiated by the complainant and his family members, it is not alleged that the applicant was entrusted with the jewellery belonging to the family and that it is in her custody and misappropriated by him. The only reference can be seen in letter dated 6th March 2018. It is the contention of the complainant that misappropriation came to the light on the day when search was conducted. It is difficult to believe that since 2017 after the applicant has left the matrimonial home the complainant or his wife never thought of demanding her jewellery which was allegedly entrusted to the applicant. The vision of complainant in private complaint and FIR differs. The private complaint was filed on 2nd February 2019 and FIR was registered on 6th November 2019 pursuant to directions of Court. This complaint was filed after the applicant filed complaint under Section 406 IPC and search warrant was issued.

10. Considering aforesaid factual aspects, the applicant need not be subjected to custodial interrogation. This application is required to be allowed. Hence, I pass following order :

ORDER

- (i) The Anticipatory Bail Application is allowed and disposed of;
- (ii) In the event of arrest of applicant in connection with CR No.8

of 2019 registered with Juhu Police Station, Mumbai, the applicant be released on on bail on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(iii) The applicant shall appear before the Investigating Officer on 28th, 29th and 30th June 2021 between 11 am and 1 pm and thereafter as and when called for;

(iv) The Interim Application stands disposed of.

(PRAKASH D. NAIK, J.)

MST